IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8200 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AHMEDABAD MUNICIPAL CORPORATION - Petitioner(s)

Versus

NAVINCHANDRA G SHAH & 1 - Respondent(s)

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Appearance :

MR RM CHHAYA for Petitioner No(s).: 1.

NOTICE SERVED for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 19/07/2005

ORAL JUDGMENT

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1. This petition is directed against the order dated 30th March, 1999 passed by the Labour Court, Ahmedabad in Recovery Application No. 470 of 1996 whereby the said application was allowed.

2. The short facts of the case are that the respondent was working as a Senior Assistant Auditor in Audit Department of the petitioner Corporation. Since the respondent has unauthorizedly remained absent from 7th October, 1995 to 13th October, 1995, the petitioner Corporation imposed a punishment of censure and also deduction of salary for the said period.

2.1. Feeling aggrieved by the said action, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. Pending the Reference, the respondent workman preferred Recovery Application before the Labour Court demanding the wages for the period from 7th October, 1995 to 13th October, 1995. The Labour Court, Ahmedabad by award dated 30th March, 1999, allowed the said Recovery Application. Hence, this petition.

3. Mr. R.M. Chhaya learned advocate for the petitioner Corporation has contended that the Labour Court while deciding the Recovery Application under Section 33(C) (2) of the Industrial Disputes Act, 1947, has committed an error in granting the wages for the

period from 7th October, 1995 to 13th October, 1995 without there being any adjudication between the parties. He has submitted that the penalty imposed by the petitioner Corporation for deduction of salary for the said period on the ground of unauthorized absenteeism, has not been set aside by the Competent Court as contemplated under Section 33 (C) (2) of the Industrial Disputes Act, 1947.

4. I have heard the learned counsel for the parties and have perused the materials produced on record. It is not in dispute that there is no award or judgment in favour of the respondent that they are entitled for the wages for the said period. The Labour Court, in the present case has granted the wages for the said period, without their being any award or judgment between the parties. The Labour Court could have passed the impugned award only if their existed an award under the relevant provision of the Act between the parties. In my opinion, the Labour Court has committed serious error by entertaining the application preferred by the respondent. Hence, the impugned order of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

5. In the result, the petition is allowed. The

impugned order dated dated 30th March, 1999 passed by the Labour Court, Ahmedabad in Recovery Application No. 470/96, is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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